

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLON DUNLAP,

Defendant-Appellant.

UNPUBLISHED

June 18, 2002

No. 231258

Wayne Circuit Court

LC No. 99-001337

Before: Kelly, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted as charged of two counts of first-degree murder, MCL 750.316, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent terms of life imprisonment for each of the murder convictions and forty to sixty years' imprisonment for the assault conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case involved the shooting deaths of Kevin (Mikey) Ford and Tyrone (Tony) Bowman, and the shooting of Tyrone's brother, Morris McAlphin. Morris and his girlfriend were living with Tyrone in his apartment in Detroit; Kevin Ford also lived in the apartment. Tyrone and Kevin sold marijuana out of the apartment. On the day of the incident, Morris and his girlfriend were at Tyrone's apartment. At some point, Tyrone and Kevin were there, too. Defendant, defendant's brother and two other men came over to the apartment. Defendant had a handgun in his waistband. Morris recognized defendant, whom he had met several times because Tyrone was dating defendant's sister.

At some point, one of the men came to get Morris and took him into a room where Morris saw Tyrone and Kevin on the floor. Defendant was standing over Tyrone and another man was standing over Kevin. Morris tried to run and was shot several times. Morris fell and rolled under the bed and tried to act dead. Morris heard Tyrone say, "No Allon," and then heard several shots fired, while defendant said "hurry up, hurry up." Morris did not see defendant or anyone else holding a gun because "it happened so fast."

At least two different guns, identified as .45 caliber and 9 mm, were used in the shootings. More than \$2,000 in cash and over 300 grams of marijuana were found in the

apartment. Both Tyrone's and Kevin's hands were bound with duct tape. Tyrone was killed by a single gunshot to his head and he was also stabbed in the throat. Kevin was shot in the head, chest and leg, and stabbed in the chest and throat.

Defendant testified that he went to Tyrone's and Kevin's apartment with "a guy named Bob" and some other men because Bob wanted to buy twenty pounds of marijuana. Defendant set the drug deal up. According to defendant, at some point "Bob and the other guy" "pulled their guns out" and defendant ran out of the apartment. Defendant said he heard a gunshot as he ran. Defendant did not go to the police.

On appeal, defendant argues that the evidence was insufficient to convict him as an aider and abettor of the charged crimes. There is no merit to this claim. This Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). There was evidence that defendant had a gun and that he arranged for a group of men to come to the victims' apartment to buy drugs. There was evidence that defendant was standing over one of the victims as the victim lay bound with duct tape, on the floor. There was evidence that one of the victims called defendant by name and pleaded "no," just before he was shot, and that, as the shooting began, defendant urged the others to hurry. As the trial court noted in its findings, the evidence showed that defendant was more than a "mere participant. He was actually the principal involved in this case." The evidence, viewed in a light most favorable to the prosecution, was sufficient to support a finding by the trial court that defendant was guilty of the charged crimes beyond a reasonable doubt. *Hampton, supra* at 368.

Defendant also argues that he did not knowingly waive his right to a jury trial. Defendant initially chose to have a jury trial and a jury was, in fact, chosen and both counsel were ready to begin the trial. Defendant "directly, and indirectly through his family" asked his attorney to "have a judge hear this without a jury." Defendant later asserted that he had to request a waiver trial because his attorney did not allow him to participate in the jury selection. Defendant subsequently signed a written waiver of trial by jury, the trial court again personally advised him of his right to a jury trial, and defendant stated on the record that he had discussed his rights with his attorney, that no one had threatened or promised him anything, and that this was what he wished to do. MCR 6.402. We find no error requiring reversal. *People v Leonard*, 224 Mich App 569, 595-596; 569 NW2d 663 (1997).

Finally, defendant contends that the trial court erred in proceeding to trial because another judge, despite stating from the bench that she was denying defendant's motion to quash, signed an order purporting to grant the motion to quash. The preliminary examination testimony by Morris was essentially the same as at trial, except that Morris testified at the preliminary exam that he saw defendant point a gun at Tyrone just before the shooting. The magistrate found probable cause to believe that an offense had been committed and that defendant committed it, and defendant was bound over for trial. MCR 6.110(E). Defendant subsequently brought several motions in the circuit court, including a motion to quash, which were heard by Judge Cynthia Hathaway. Judge Hathaway granted some of defendant's motions but stated, "I don't see any abuse of discretion on the part of the magistrate. So I'm going to deny the Motion to Quash." Despite this statement, the form order regarding the motion to quash in the lower court

file has a checkmark in the box labeled “granted.” The matter proceeded to jury selection before Judge Hathaway until defendant requested a waiver trial and the matter was transferred to a different judge.

It is apparent from Judge Hathaway’s statement on the record denying the motion to quash and from the many pretrial motions and proceedings reflected in the lower court file that all parties understood that the motion to quash had been denied and that the matter was proceeding to trial. Until now, defendant made no reference to the order in the lower court file, either through counsel or in his own letters to the court. It is also apparent from the record that defendant’s motion to quash was properly denied and that the order contained in the lower court file contains a clerical error. Accordingly, we remand for the limited purpose of correcting this clerical error to reflect that the motion to quash was denied. MCR 6.435(A).

Affirmed and remanded for correction of the clerical error in the order regarding defendant’s motion to quash to reflect that the motion was denied. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ Christopher M. Murray